IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.30 OF 2004

Prophylya Biologicals Pvt. Ltd. ... Petitioner.

vs.

Manbro Pharma Pvt. Ltd. And another. ... Respondents.

Mr.P.A. Sawant with Shinde i/b. Milan Bhise & Co. for Petitioner.

Mr.Swapnil Bangur i/b. A.V.Jain & Associates for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 26th April,2005

P.C.:-

1. By this petition, the petitioner challenges the Award made by the learned Arbitrator on 30th September,2003. Admittedly, the petitioner did not appear before the Arbitrator. After receiving the notice from the learned Arbitrator, the petitioner sent a letter disputing the arbitration clause. The grievance of the petitioner is that the learned Arbitrator should have first rejected that objection and thereafter proceed on merit to decide the dispute. The dispute appears to be whether the goods were sold under the invoices having arbitration clause or under the invoices that did not have arbitration

clause. In my opinion, the petitioner is not justified in sending objection to the arbitrator and not appearing before the Arbitrator. Whether the Arbitration clause exists or not is a question of fact and therefore, it is for the party which claims that there is no arbitration clause to lead evidence, and for that purpose, the petitioner should have appeared and led the evidence. However, the fact remains that the Award has been made in the absence of the petitioner. The learned Counsel appearing for the petitioner expressed willingness of the petitioner to deposit the amount of principle i.e. about Rs.3 lakhs (Rupees Three lakhs only) in the Court.

2. In this view of the matter therefore, by consent of parties, the petition is disposed of in following terms:-

(i) The Award impugned in the petition is set aside. The disputes between the parties are referred to Shri.U.J.Makhija, Advocate, having address "Hamam House, 2nd Floor, Ambalal Doshi Marg, Fort, Bombay-400023.", who shall decide the dispute as expeditiously as possible in accordance with the provisions of Arbitration and Conciliation Act,1996, subject to the condition that within a period of Four Weeks from today, the petitioner shall deposit in this Court an amount of Rs.3,00,000/- (Rupees Three lakhs only), with due notice to the respondents.

(ii) The amount so deposited be invested in a fixed deposit in

Nationalised Bank. The disposal of that amount shall be governed by the Award that may be made by the Arbitrator.

(iii) In case the amount is not deposited within the aforesaid period the petition shall be treated as dismissed without any further reference to the Court.

Petition disposed of. There shall be no order as to costs.